

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jason May et al.

Title: METHOD AND APPARATUS FOR FACILITATING ONLINE PAYMENT TRANSACTIONS IN A NETWORK-BASED TRANSACTION FACILITY USING MULTIPLE PAYMENT INSTRUMENTS

Docket No.: 2043.016US1
Filed: May 22, 2000
Examiner: Charles Kyle



Serial No.: 09/577,434
Due Date: February 28, 2006
Group Art Unit: 3624

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Peter Rebuffoni
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PATENT

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Appellants:	Jason May et al.	Examiner:	Charles R. Kyle
Serial No.:	09/577,434	Group Art Unit:	3624
Filed:	May 22, 2000	Docket No.:	2043.016US1
		Assignee:	eBay Inc.
Title:	METHOD AND APPARATUS FOR FACILITATING ONLINE PAYMENT TRANSACTIONS IN A NETWORK-BASED TRANSACTION FACILITY USING MULTIPLE PAYMENT INSTRUMENTS		

APPELLANTS' BRIEF ON APPEAL

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Washington, D.C. 2023 1

This brief is presented in support of the Notice of Appeal, filed on November 15, 2005, from the final rejection of pending claims 1-25 of the above-identified patent application. The Office Action from which Appellants appeal was mailed August 15, 2005.

Please charge the requisite brief filing fee of \$500.00 to Deposit Account No. 19-0743. Please charge any required additional fees or credit overpayment to Deposit Account No. 19-0743.

Appellants respectfully request reversal of the Examiner's rejection of pending claims 1-25.

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APPELLANTS' BRIEF ON APPEAL

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Assignee: eBay Inc.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, eBay
Inc.

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Assignee: eBay Inc.

2. RELATED APPEALS AND INTERFERENCES

Appellants know of no other appeals or interferences that will have a bearing on the Board's decision in the present appeal.

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Assignee: eBay Inc.

3. STATUS OF THE CLAIMS

Claims 1-25 have been finally rejected and are the subjects of the present appeal.

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4. STATUS OF THE AMENDMENTS

The original claims are 1-25.

Claims 1-17, 20-22, 24, and 25 were amended and the amendments were entered by the Examiner. Claims 1-25 received a final rejection on August 15, 2005. No further amendments were made.

A Notice of Appeal was filed on November 15, 2005.

5. SUMMARY OF THE INVENTIVE SUBJECT MATTER

This summary is presented in compliance with the requirements of Title 37 C.F.R. § 41.37(c)(1)(v), mandating a “concise explanation of the subject matter defined in each of the independent claims involved in the appeal ...” Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed so as to limit the scope of the claims in any way.

Claim 1

Claim 1 is supported in Figures 5 and 7 and in the specification *inter alia* at page 17, line 19 – page 19, line 12, page 21, lines 12-19, page 23, lines 10-12, and page 26, lines 3 and 4.

Figure 5 is a flowchart illustrating a technique for facilitating online payment transactions between participants in a network-based transaction facility. The technique includes communicating information to a first participant, receiving payment option information from the first participant, passing the payment option information to a second participant, and accepting personal billing information from the payment option information. Figure 7 illustrates a process flow for evaluating risks involved in an online payment service. The specification indicates that in one embodiment an online payment service includes a risk management system that determines, based on feedback information, whether the second participant is qualified to use a selected payment instrument.

Claim 13

Claim 13 is supported in Figures 1, 5, and 7 and in the specification *inter alia* at page 17, line 19 – page 19, line 12, page 21, lines 12-19, page 23, lines 10-12, and page 26, lines 3 and 4.

Figure 1 illustrates a system that includes a network-based transaction facility, a client, and an online payment service. Figure 5 is a flowchart illustrating a technique for facilitating

online payment transactions between participants in a network-based transaction facility. The technique includes communicating information to a first participant, receiving payment option information from the first participant, passing the payment option information to a second participant, and accepting personal billing information from the payment option information. Figure 7 illustrates a process flow for evaluating risks involved in an online payment service. The specification indicates that in one embodiment an online payment service includes a risk management system that determines, based on feedback information, whether the second participant is qualified to use a selected payment instrument.

Claim 25

Claim 1 is supported in Figures 5 and 7 and in the specification *inter alia* at page 17, line 19 – page 19, line 12, page 21, lines 12-19, page 23, lines 10-12, page 26, lines 3 and 4, and page 38, lines 13-15.

Figure 5 is a flowchart illustrating a technique for facilitating online payment transactions between participants in a network-based transaction facility. The technique includes communicating information to a first participant, receiving payment option information from the first participant, passing the payment option information to a second participant, and accepting personal billing information from the payment option information. Figure 7 illustrates a process flow for evaluating risks involved in an online payment service. The specification indicates that in one embodiment an online payment service includes a risk management system that determines, based on feedback information, whether the second participant is qualified to use a selected payment instrument. The specification also indicates that any of the methodologies can be embodied on a computer-readable medium.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellants request review of whether claims 1-3, 8-10, 12, and 13-24 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf (U.S. 5,794,221) in view of eBay ("The Official eBay Guide to Buying, Selling, and Collecting Just About Anything").

Appellants also request review of whether claim 4 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Gifford (U.S. 6,049,785).

Appellants also request review of whether claims 5, 6, and 11 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Watson (U.S. 5,978,780).

Appellants also request review of whether claim 7 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of *Tessler* ("eBay's Deal with Wells Fargo Allows Sellers to Accept Credit").

Appellants also request review of whether claim 25 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf (U.S. 5,794,221).

7. ARGUMENT

§103 Rejection of the Claims

1) *The Applicable Law*

According to *M.P.E.P.* § 2141, which cites *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986), the following tenets of patent law must be adhered to when applying 35 U.S.C. § 103. First, the claimed invention must be considered as a whole. Second, the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination. Third, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Fourth, obviousness is determined using a reasonable expectation of success standard. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. *M.P.E.P.* § 2141 (citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966)).

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d, 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

Just because references can be combined or modified, the resultant combination is not obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); MPEP § 2143.01. to the MPEP, "There are three

possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).” MPEP § 2143.01.

2) Discussion of the Rejected Claims

DISCUSSION OF CLAIMS 1-3, 8-10, AND 12-24

Claims 1-3, 8-10, and 12-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf (U.S. 5,794,221) in view of *eBay* (“The Official eBay Guide to Buying, Selling, and Collecting Just About Anything”).

Egendorf and eBay Do Not Teach or Suggest All the Claim Elements

Claim 1 recites a computer-implemented method including the following:

- “performing a risk analysis pertaining to an online payment transaction between the first participant and the second participant using at least feedback information”
- “the feedback information pertaining to the second participant and including information provided by peers of the second participant in the network-based transaction facility”
- “the risk analysis to determine whether the second participant is qualified to use a payment instrument selected by the second participant from the at least one payment instrument acceptable to the first participant”

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In rejecting claim 1, the Examiner asserts, “Specifically, Egendorf discloses the use of a third party credit card transaction approval company, which performs risk analysis through steps such as checking whether available credit will be exceeded by a particular transaction or whether the card is reported stolen.” FOA at pp. 9-10. However, the Examiner has mischaracterized Egendorf. Contrary to the Examiner’s assertion, Egendorf does not explicitly mention or even allude to performing a “risk analysis through steps such as checking whether available credit will be exceeded by a particular transaction or whether the card is reported stolen.” Instead, Egendorf discloses a provider system for facilitating transactions between vendors and customers, where the provider system can seek approval from a credit card company. Egendorf states, “Provider 2 can then send verifying information to one or both of the customer and vendor to indicate that the transaction has been approved, if approval of a third party, such as a credit card company, is required.” Egendorf at col. 5, ll. 36-39. Therefore, Egendorf merely teaches obtaining approval from a credit card company, but Egendorf does not teach any part of claim 1’s risk analysis.

The Examiner goes on to admit that Egendorf does not disclose that “a risk analysis is performed based on feedback information provided by peers of the second participant.” FOA at p. 3. Thus, the Examiner looks to *eBay* for what Egendorf is lacking. *eBay* describes a mechanism for sharing a user’s feedback with other users. See *eBay* at pp. 31-35. According to *eBay*, users share feedback to allow “buyers and sellers to establish a track record in the community that can be viewed by potential buyers and sellers.” *eBay* at page 31. Although *eBay* may suggest that a user could use the feedback to determine with whom the user should conduct business, the Office Action’s combination does not teach or suggest Claim 1’s computer-implemented risk analysis. As noted above, claim 1’s risk analysis includes using feedback information provided by peers of a transaction participant to determine whether the transaction participant is qualified to use a payment instrument (selected by the transaction participant) from

at least one payment instrument that it acceptable to another transaction participant. The cited combination does not teach all these features.

There Is No Teaching or Suggestion to Combine Egendorf and eBay

Appellants submit that the Examiner has improperly combined Egendorf with *eBay*. The Examiner asserts, “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Egendorf by allowing the first participant to specify a payment form used by the second participant as taught by *eBay* because this would have allowed the first participant to exercise greater control over the transaction.” FOA at pp. 3-4. The Examiner has not identified a single passage from Egendorf, *eBay*, or any other reference that suggests the desirability of the cited combination. As a result, Appellants submit that the Examiner used impermissible hindsight in forming the cited combination.

The Examiner also asserts, “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Egendorf with the risk analysis [of *eBay*] using feedback information provided by peers of the second participant of *eBay* because this would provide information related to the participant's reliability and likelihood of prompt payment.” (Insertion added.) FOA at p. 4. The Examiner alleges that the combination “is supported by the text at page 31 [of *eBay*], text beginning ‘In the world of commerce...’, which clearly shows the importance to a transaction of a user’s character.” (Insertion added.) Appellants submit that the cited passage would not motivate one to modify Egendorf’s provider system into a system for seeking a credit card company’s approval for a customer’s transaction, where the credit card company has access to *eBay*-type feedback about the customer. The Examiner has not identified a single passage from Egendorf, *eBay*, or any other reference that would motivate one to modify Egendorf’s provider system to use *eBay*’s feedback for a computer-implemented risk analysis. Appellants submit that the Examiner’s analysis is based on impermissible hindsight.

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Because the Examiner has not provided a motivation for the cited combination, Appellants submit that the Examiner has not established a *prima facie* case of obviousness under 35 USC §103.

Claim 13 includes features similar to those noted in the discussion of claim 1. Claims 2-3, 8-10, 12, and 14-24 each depend, directly or indirectly, on one of claims 1 or 13. Appellants respectfully submit that claims 2-3, 8-10, 12, 13, and 14-25 are allowable for at least the reasons noted above.

DISCUSSION OF CLAIM 4

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Gifford (U.S. 6,049,785). As noted above, Appellants submit that the Examiner does not establish a *prima facie* case of obviousness vis-à-vis claim 1. To make a *prima facie* case of obviousness by combining Egendorf and *eBay* with Gifford, the Examiner must provide what Egendorf and *eBay* are lacking. The Examiner does not point to a passage in Gifford that overcomes the deficiencies discussed above vis-à-vis claim 1. As such, Appellants respectfully submit that the combination of Egendorf, *eBay*, and Gifford does not make a *prima facie* case of obviousness vis-à-vis claim 4.

DISCUSSION OF CLAIMS 5-6 AND 11

Claims 5-6 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Watson (U.S. 5,978,780). As noted above, Appellants submit that the Examiner has not established a *prima facie* case of obviousness vis-à-vis claim 1. To make a *prima facie* case of obviousness by combining Egendorf and *eBay* with Watson, the Examiner must provide what Egendorf and *eBay* are lacking. The Examiner does not point to a passage in Watson that overcomes the deficiencies discussed above vis-à-vis claim

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1. As such, Appellants respectfully submit that the combination of Egendorf, *eBay*, and Watson does not make a *prima facie* case of obviousness vis-à-vis claims 5-6 and 11.

DISCUSSION OF CLAIM 7

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Tessler (“eBay’s Deal with Wells Fargo Allows Sellers to Accept Credit”). As noted above, Appellants submit that the Examiner has not established a *prima facie* case of obviousness vis-à-vis claim 1. To make a *prima facie* case of obviousness by combining Egendorf and *eBay* with Tessler, the Examiner must provide what Egendorf and *eBay* are lacking. The Examiner does not point to a passage in Tessler that overcomes the deficiencies discussed above vis-à-vis claim 1. As such, Appellants respectfully submit that the combination of Egendorf, *eBay*, and Tessler does not make a *prima facie* case of obviousness vis-à-vis claim 7.

DISCUSSION OF CLAIM 25

Claim 25 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf. Claim 25 recites features similar to claim 1. If the combination of Egendorf and *eBay* does not teach or suggest all the elements of claim 1, Egendorf alone does not teach or suggest all the elements of claim 25. As such, Appellants request withdrawal of this rejection.

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8. CONCLUSION

It is respectfully submitted that the claimed invention is not unpatentable in view of the cited art. It is respectfully submitted that claims 1-25 should therefore be allowed. Reversal of the Examiner's rejections of claims 1-25 is respectfully requested.

Respectfully submitted,

Jason May et al.

By their Representatives,

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Peter Rebffoni

Name

Peter Rebffoni

Signature

CLAIMS APPENDIX: THE CLAIMS ON APPEAL

1. A computer-implemented method for facilitating online payment transactions between participants in a network-based transaction facility, the computer-implemented method comprising:

communicating to a first participant, information identifying a plurality of payment instruments available for processing online payment transactions in the network-based transaction facility, the information to facilitate a selection by the first participant of at least one of the plurality of payment instruments that the first participant is willing to accept when receiving a payment from a second participant;

receiving payment option information from the first participant, the payment option information identifying the selection of the at least one of the plurality of payment instruments; determining that the first participant is qualified to accept the at least one of the plurality of payment instruments;

communicating the payment option information to the second participant via the communications network;

performing a risk analysis pertaining to an online payment transaction between the first participant and the second participant using at least feedback information, the feedback information pertaining to the second participant and including information provided by peers of the second participant in the network-based transaction facility, the risk analysis to determine whether the second participant is qualified to use a payment instrument selected by the second participant from the at least one payment instrument acceptable to the first participant; and

accepting personal billing information concerning the selected payment instrument if the second participant is qualified to use the selected payment instrument, the personal billing information being accepted via the communications network to facilitate the online payment

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transaction between the first participant and the second participant.

2. The computer-implemented method of claim 1 further comprising:
dynamically evaluating risk involved in the online payment transaction between the first participant and the second participant; and
restricting the online payment transaction based on the evaluated risk.
3. The computer-implemented method of claim 2, wherein the involved risk is evaluated using various information concerning the first participant and the second participant, the various information including information stored by an online payment service and information obtained from any one of a plurality of third party risk analysis providers via the communications network.
4. The computer-implemented method of claim 2, wherein the involved risk is evaluated at various stages of the online payment transaction between the first participant and the second participant.
5. The computer-implemented method of claim 1 further comprising:
accepting multiple payments issued to the first participant in a course of business transactions conducted by the first participant;
accumulating the multiple payments over a period of time as a single accumulated payment; and
disbursing the single accumulated payment to the first participant.
6. The computer-implemented method of claim 5, wherein the multiple payments are accepted over the communications network using the plurality of payment instruments.

7. The computer-implemented method of claim 1, wherein the network-based transaction facility comprises a network-based auction facility.

8. The computer-implemented method of claim 1 further comprising:
communicating the personal billing information of the second participant to a financial institution to process the online payment transaction, the personal billing information being communicated over the communications network; and
notifying the first participant when the online payment transaction completes.

9. The computer-implemented method of claim 1 further comprising:
enabling the first participant to initiate the online payment transaction via communications network;
communicating to the first participant an invoice form interface to obtain invoice information from the first participant;
determining that the first participant is qualified to initiate the online payment transaction described by terms included in the invoice information; and
passing the invoice information to the second participant.

10. The computer-implemented method of claim 1 further comprising:
enabling the second participant to initiate the online payment transaction via communications network;
communicating to the first participant information indicating a willingness of the second participant to use at least one of the plurality of payment instruments; and
providing a billing information interface to the second participant to obtain personal

billing information concerning the at least one of the plurality of payment instruments if the second participant is qualified to use the at least one of the plurality of payment instruments.

11. The computer-implemented method of claim 1, wherein the personal billing information is encrypted.

12. The computer-implemented method of claim 1, wherein the personal billing information of the second participant is not disclosed to the first participant unless permitted by the second participant.

13. A system for facilitating online payment transactions between participants in a network-based transaction facility, the system comprising:

the network-based transaction facility to implement a transaction system that facilitates business transactions between a user and another user;

a client, coupled to the network-based transaction facility, to present information identifying a plurality of payment instruments available for processing online payment transactions pertaining to corresponding business transactions, the presented information facilitating a selection by the user of at least one of the plurality of payment instruments that the user is willing to accept when receiving a payment from the other user, and to communicate payment option information of the user over a communications network, the payment option information identifying the selection of the at least one of the plurality of payment instruments; and

an online payment service, coupled to the network-based transaction facility and the client via the communications network, the online payment service to receive the payment option information from the client, to determine that the user is qualified to accept the at least one of the

plurality of payment instruments, to make the payment option information available to the other user via the communications network, to enable the other user to select a preferred payment instrument from the at least one of the payment instruments acceptable to the user, to determine whether the other user is qualified to use the preferred payment instrument based on a risk analysis pertaining to an online payment transaction between the user and the other user, and to accept personal billing information concerning the preferred payment instrument from the other user via the communications network if the other user is qualified to use the preferred payment instrument, wherein the risk analysis is performed using feedback information pertaining to the other user and provided by peers of the other user in the network-based transaction facility.

14. The system of claim 13, wherein the online payment service comprises:
- a risk management system to dynamically evaluate risk involved in the online payment transaction between the user and the other user; and
 - a payment processing system to restrict the online payment transaction based on the evaluated risk.

15. The system of claim 14, wherein the involved risk is evaluated using various information concerning the user and the other user, the various information including information stored by an online payment service and information obtained from any one of a plurality of third party risk analysis providers via the communications network.

16. The system of claim 14, wherein the involved risk is evaluated at various stages of the online payment transaction between the user and the other user.

17. The system of claim 13 wherein the online payment service is further configured to accept multiple payments issued to the user in a course of business transactions conducted by the user;
- accumulate the multiple payments over a period of time as a single accumulated payment,
- and
- disburse the single accumulated payment to the user.
18. The system of claim 17 wherein the multiple payments are accepted over the communications network using the plurality of payment instruments.
19. The system of claim 13 wherein the network-based transaction facility comprises a network-based auction facility.
20. The system of claim 13, wherein the online payment service is configured to communicate the personal billing information of the other user to a financial institution to process the online payment transaction, the personal billing information being communicated over the communications network, and
- notify the user when the online payment transaction completes.
21. The system of claim 13, wherein the online payment service is configured to enable the user to initiate the online payment transaction via communications network, communicate to the user an invoice form interface to obtain invoice information from the user,
- determine that the user is qualified to initiate the online payment transaction described by terms included in the invoice information, and

pass the invoice information to the other user.

22. The system of claim 13, wherein the online payment service is configured to enable the other user to initiate the online payment transaction via communications network,

communicate to the user information indicating a willingness of the other user to use at least one of the plurality of payment instruments, and

provide a billing information interface to the other user to obtain personal billing information concerning the at least one of the plurality of payment instruments if the other user is qualified to use the at least one of the plurality of payment instruments.

23. The system of claim 13 wherein the personal billing information is encrypted.

24. The system of claim 13, wherein the personal billing information of the other user is not disclosed to the user unless permitted by the other user.

25. A machine-readable medium comprising instructions, which when executed on a machine, cause the machine to perform a method for facilitating online payment transactions between participants in a network-based transaction facility, the method comprising:

communicating to a first participant, via a communications network, information identifying a plurality of payment instruments available for processing online payment transactions in the network-based transaction facility, the information to facilitate a selection by the first participant of at least one of the plurality of payment instruments that the first participant is willing to accept when receiving a payment from a second participant;

receiving payment option information from the first participant via the communications

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network, the payment option information identifying the selection of the at least one of the plurality of payment instruments;

determining that the first participant is qualified to accept the at least one of the plurality of payment instruments;

communicating the payment option information to the second participant via the communications network;

performing a risk analysis pertaining to an online payment transaction between the first participant and the second participant using feedback information, pertaining to the second participant and provided by peers of the second participant in the network-based transaction facility, to determine whether the second participant is qualified to use a payment instrument selected by the second participant from the at least one payment instrument acceptable to the first participant; and

accepting personal billing information concerning the selected payment instrument if the second participant is qualified to use the selected payment instrument, the personal billing information being accepted via the communications network to facilitate the online payment transaction between the first participant and the second participant.

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EVIDENCE APPENDIX

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RELATED PROCEEDINGS APPENDIX

NONE